

## **ADULT PROTECTIVE SERVICE LAW**

### **G.S. 108A-100 et.seq.**

The mistreatment of disabled adults is a serious problem. North Carolina is one of many states which recognizes this and passes legislation to protect adults who are vulnerable and unable to protect themselves from abuse, neglect, or exploitation. This law affects adults, regardless of their living situation, who are incapacitated due to mental or physical disabilities. It requires anyone suspecting that a disabled adult is in need of protection to notify the local Department of Social Services. This Department, in turn, is responsible for evaluating and providing or arranging for services to persons in need of protection. This law is called “Protection of Abused, Neglected or Exploited Disabled Adult Act” and is in Article 6, Chapter 108A of the General Statutes.

#### **WHO MUST REPORT?**

The law requires that anyone who suspects that a disabled adult needs protective services must report the case to the county director of social services. This is referred to as a mandatory reporting law. A person who reports does not have to have actual knowledge or proof that abuse, neglect or exploitation is occurring in order to trigger the law’s requirement that anyone who has “reasonable cause to believe that a disabled adult is in need of protection services shall report such information.”

#### **WHO IS A DISABLED ADULT?**

The legal definition of a ‘disabled adult’ covered by the reporting law is broad. It covers much more than a physically incapacitated person. It includes anyone who is 18 or older and is physically or mentally incapacitated by mental retardation, cerebral palsy, epilepsy, autism, organic brain damage caused by advanced age, or any other physical degeneration connected with these disabilities. This term also includes any adult who is physically or mentally incapacitated by conditions incurred at any age as a result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of “substances”. The definition also covers lawfully emancipated minors who are incapacitated as defined above.

#### **WHEN IS A DISABLED ADULT IN NEED OF PROTECTIVE SERVICE?**

The law states: “A disabled adult shall be in need of protective services if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.” Lacking essential services is only part of it: inability to obtain or without someone who can and will get the essential services is really the point.

The definition of ‘essential services’ is broad; it means “those social, medical, psychiatric, or legal services necessary to safeguard the disabled adult’s rights and resources and to maintain the physical or mental well-being of the individual. These

services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation.”

Protective services are thus required to protect a disabled adult “from abuse, neglect, or exploitation.” These terms are defined as following:

ABUSE means the intentional infliction of pain, injury, or mental anguish; unreasonable confinement; or willful deprivation by a caretaker of services necessary to keep a person mentally or physically well.

NEGLECT is the inadequate care of a disabled adult who therefore does not receive the services that are necessary to maintain his mental and physical health. The law states: “The word “neglect” refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving such services from his caretaker.”

EXPLOITATION means the illegal or improper use of a disabled adult or his resources for another’s profit or advantage.

The term “protective services” is more broadly defined than “essential services.” Protective services include evaluating the need for service and mobilizing essential services on behalf of the disabled adult. Protective services also include evaluating the need for emergency protection and arranging for essential services to be delivered.

### MAKING A REPORT

Reports of a suspected need for protection should be made to the Director of Social Services in the county where the disabled person resides or is found. The report need not be made personally to the director. Most social services departments have a specified unit or staff in the department that is responsible for receiving these reports. Reports may be oral or written and may be made by telephone. Anonymous reports are also accepted. The county DSS would prefer, however, to know who is making the report and how to contact him/her in case additional information is needed.

The reporting law specifies what must be included in a report of suspected abuse, neglect, or exploitation: the name and address of the disabled adult, his age, the nature and extent of his injury or condition that results from abuse or neglect, the name and address of his caretaker, and other pertinent information. If the reporter does not know everything that the law requires about the disabled adult, he should simply give whatever information he has.

### PROTECTION OF REPORTERS

Anyone reporting suspected abuse, neglect, or exploitation of a disabled adult has immunity from any civil or criminal liability that may arise after such a report is made unless he acted with malice or in bad faith.

The Protective Services Law does not cover confidentiality of case information. However, administrative rules governing the provision of adult protective services specify that the report's name is to be kept confidential unless court action necessitates that the reporter's identity be revealed. This may also be revealed if it is requested by the Division of Facility Services in conducting its investigation or the District Attorney or law enforcement agency conducting an investigation or prosecution of abuse, neglect or exploitation.

### RESPONSIBILITIES OF THE COUNTY DEPARTMENT

After receiving a report that a disabled adult needs protective services, the county director is required by law to make a prompt and thorough evaluation to determine whether the person needs protective services. The evaluation must include a visit to the person about whom the report was made and consultation with others to learn the facts of the reported case. After the evaluation, the social services director is required to notify the person who made the report whether a need for protective services was found. Administrative rules require that the evaluation process begin within 72 hours after the report is received. Evaluation of reports involving an emergency are to be initiated within 24 hours of receipt of the report.

### AUTHORITY OF THE COUNTY DIRECTOR

The county Department of Social Services director or his staff has the authority to review and copy any and all records, or parts of records, kept by a facility or agency when this is necessary to conduct a thorough evaluation report. This includes records maintained by facilities licensed by the Department of Human Resources. The Department of Social Services also has the authority to interview the disabled adult without any one else present.

### RIGHT OF THE DISABLED ADULT TO CONSENT

If the county Social Services Department determines that a disabled adult needs protective services, the director is required by law to provide or arrange for such protective services if the disabled adult consents. (G.S. 108A-104) The disabled adult has a right to determine whether he wants the protective services. If the disabled adult consents to protective services but his caretaker (such as the adult with whom he lives) refuses to allow them to be provided, the law authorizes the director of Social Services to petition the District Court for an order enjoining interference by the caretaker. The autonomy of an adult is thus respected.

### WHEN THE DISABLED ADULT LACKS CAPACITY TO CONSENT

If the social services department finds that a disabled adult is in need of protective services but lacks the capacity to consent to protective services, the reporting law

authorizes the county agency to petition the District Court for an order authorizing these services. G.S. 108A-105 determines that the disabled adult lacks capacity to consent to protective services when he “lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to, provisions for health or mental health care, food, clothing, or shelter because of physical or mental incapacity.” The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to protective services.

If the judge finds by clear, cogent, and convincing evidence that a person needs protective services and lacks the capacity to consent, he may order that protective services be provided. The order designates the person or agency which is to perform or obtain essential services for the disabled adult or consent to protective services on his behalf.

Within 60 days after ordering protective services for a disabled adult who has been found to lack the capacity to consent, the court must review the case to determine whether a petition should be filed with the Clerk of Superior Court to appoint a guardian for the disabled adult under Article 1 of Chapter 35A of the North Carolina General Statutes. Under certain conditions, the court may extend the original 60-day period for an additional 60 days, and again make a determination of whether a petition for guardianship should be filed. Protective services are not provided for more than a total of 120 days under court order.

#### EMERGENCY SERVICES BY COURT ORDER

In certain specified situations, the county director can petition the district court to authorize emergency services to be provided to a disabled adult. To do this, a finding must be made that there is a reasonable cause to believe that (1) the adult lacks the capacity to consent and needs protective services; (2) an emergency exists; and (3) no one else authorized by the law or court order to give consent is available or willing to arrange for the emergency services. A hearing is held on the petition and 24-hour notice must be given to the disabled adult and other specified parties.

The law authorizes the court to issue an emergency order without a hearing only if the court finds, among other things, that the disabled person may suffer irreparable injury or death if the order is delayed for a hearing. Such an order is referred to as an ex parte emergency court order.